

REMARKS

United States nonprovisional patent application serial number 10/071,032, was filed February 8, 2002. A Notice to File Corrected Application Papers *Filing Date Granted* dated June 4, 2002, Confirmation number 3659, (COPY ENCLOSED), was issued by the United States Patent and Trademark Office ("USPTO") that alleged that the application is informal because the original specification contained improper margins and/or that pages numbered 259-268 of the specification were omitted.

This Petition Under 37 C.F.R. § 1.53(e)(2) includes the items enclosed herewith, namely Declarations A to C under 37 C.F.R. § 1.68 and Exhibits A to E.

Further, a Preliminary Amendment Under to 37 C.F.R. 1.115(a) ("Preliminary Amendment") that is in response to the NOTICE's requirement for a substitute specification is enclosed herewith. The Preliminary Amendment amends the application to enter a substitute specification, including original claims, in compliance with 37 CFR §1.52. No other amendment is made therein. No new matter is added. The Preliminary Amendment is hereby incorporated herein by reference.

PETITION UNDER 37 C.F.R. § 1.53(e)(2)

The Notice alleged, "The following item(s) appear to have been **omitted** from the application:

- **Page(s) pages: 259-268** of the specification (description and claims)."

Applicants respectfully traverse the allegation of omitted item(s) for the reasons provided below.

The allegedly omitted pages are pages numbered 259-268 of the specification, which pages contain Claim 30 (in part) to Claim 44. The allegedly omitted pages numbered 259-268 are provided as part of the enclosed substitute specification, which is

submitted for the reasons provided in the above referenced Preliminary Amendment.

Applicants note that the allegedly omitted pages numbered 259-268 of both the original and substitute specifications contain Claim 30 (in part) to Claim 44.

Applicants note that a true copy on A4 paper of the original specification was the specification which was filed on February 8, 2002, as part of the above-mentioned patent application. As evidenced in Declaration B, at the time the copy on A4 paper of the original specification was made, a true copy, except for paper size, of the original specification on standard Letter-size paper was also made for Applicants' file. The original transmittal, original postcard, and the copy on A4 paper of the original specification were deposited with the USPTO as part of the nonprovisional application papers. Applicants note that the return postcard was received back from the USPTO with a U.S. PTO barcode label affixed thereon.

Applicants hereby contend that the allegedly omitted item(s) were in fact deposited, with the nonprovisional application papers, with the United States Postal Service as Express Mail addressed to BOX PATENT APPLICATION, Commissioner for Patents, Washington D.C. 20231, Express Mail number EF378139629US, and thus the omitted item(s) should be considered to be deposited in the USPTO with the nonprovisional application papers. As evidence of the deposit of the alleged omitted item(s), Applicants reference the above-identified Declarations A to C under 37 C.F.R. § 1.68, which are signed by the persons who drafted the specification, prepared the specification and filing papers for mailing, or deposited the specification and filing papers with the United States Postal Service, respectfully.

In support of the Declarations A to C, additional evidence of the deposit is enclosed with this Petition as Exhibits A to E. Exhibits A to E, respectfully, are:

- (a) a true copy of the signed Transmittal of a Patent Application under 37 C.F.R. § 1.53(b) on two pages ("Transmittal"), which is
EXHIBIT A;

- (b) a true copy of Applicants' return postcard ("Postcard"), which is EXHIBIT B;
- (c) a true copy of the true copy, except for paper size, of pages numbered 259 to 268 of the original specification on standard Letter-size paper ("Pages 259-268"), which is EXHIBIT C;
- (d) a true copy of the Express Mail tear sheet ("Tear Sheet"), which is EXHIBIT D; and
- (e) a true copy of the Register Receipt, which is EXHIBIT E.

Applicants refer the Commissioner for Patents to the Declarations A to C for a remarks that relate Exhibits A to E to the application. Applicants make remarks below regarding certain exhibits in support of the instant Petition.

Regarding EXHIBIT A, on page 2 of the Transmittal of a Patent Application under 37 C.F.R. § 1.53(b), under the heading "The filing fee has been calculated as follows:", the fee is calculated for a total of 44 claims.

Regarding EXHIBIT B, on Applicants' return postcard (with a U.S. PTO barcode label affixed thereon), it is recorded in item number 1. that the specification (i.e., description) contains 212 pages and in item number 2. that there are 44 claims on 57 pages with the nonprovisional application papers. Applicants return postcard thus evidences the submission of a specification (description and claims) on a total of 269 pages. As evidenced by the instant specification and/or the enclosed substitute specification, the specification consists of a Title on one page, a description on pages numbered 1 to 211, and 44 claims on pages numbered 212 to 268.

Further, EXHIBIT C, which is a true copy of pages numbered 259 to 268 of the true copy, except for paper size, on Letter-size paper of the original specification, evidences what was embraced by the allegedly omitted pages.

The above-referenced Declarations A, B, and C, when taken together with Exhibits A to E, evidence that the nonprovisional application papers, including a specification containing a Title page, a description on pages numbered 1 to 211, and 44 claims on pages numbered 212 to 268, were deposited, with the nonprovisional application papers, with the United States Postal Service as Express Mail addressed to BOX PATENT APPLICATION, Commissioner for Patents, Washington D.C. 20231, Express Mail number EF378139629US, and thus the omitted item(s) should be considered to be deposited in the USPTO with the nonprovisional application papers.

The submitted evidence thus shows that the nonprovisional application papers deposited with the USPTO did contain the allegedly omitted pages numbered 259-268.

Accordingly, Applicants petition the Commissioner for Patents to:

- (1) determine that the items alleged in the NOTICE as omitted from the application, namely pages numbered 259-268 of the specification (description and claims), were received by the United States Patent and Trademark Office with the above-identified application; and
- (2) determine that the filing date accorded to the above-identified application of February 8, 2002, should also be accorded for pages numbered 259 to 268 of the specification.

Applicants further respectfully request a refund of the petition fee in anticipation that the instant Petition will be granted by the Commissioner for Patents.

In view of the above Petition, and remarks, Applicants deem that pages numbered 259-268 of the original specification (description and claims) were received by the United States Patent and Trademark Office with the nonprovisional application papers, and that the filing date accorded to the subject application of February 8, 2002, should also be accorded for pages numbered 259 to 268 of the specification.

In the event that the instant Petition is not granted, Applicants respectfully request that the Title page and pages numbered 1 to 258 of the enclosed substitute specification be accepted as a formal application, and that the application be examined on the merits.

Substitute Specification in Compliance with 37 C.F.R. §1.52

The Notice alleged, “Papers contain improper margins. *Each sheet must have a left margin of at least 2.5 cm (1") and top, bottom and right margins of at least 2.0 cm (3/4")*”.

The Notice requested Applicants provide a “substitute specification in compliance with 37 CFR 1.52”.

Applicants above-referenced Preliminary Amendment under 37 C.F.R. 1.115(a) has amended the application to enter a substitute specification, including original claims, in compliance with 37 CFR §1.52. As mentioned above, the Preliminary Amendment has been incorporated by reference.

In view of the above Petition, Preliminary Amendment, and remarks, Applicants deem:

- (1) the items alleged in the NOTICE as omitted from the application, namely pages numbered 259-268 of the specification (description and claims), were received by the United States Patent and Trademark Office with the above-identified application;
- (2) the filing date accorded to the above-identified application of February 8, 2002, should also be accorded for pages numbered 259 to 268 of the specification;
- (3) the substitute specification enclosed with the above-referenced Preliminary Amendment, which substitute specification includes the Title page, description on pages numbered 1 to 211, and 44 claims on pages numbered 212 to 268, should be made part of the above-identified application;

- (4) the above-identified application with the substitute specification referenced in (3) above should be accepted as a formal application;
- (5) the filing date accorded to the above-identified application, which is the date the application was received by the United States Patent and Trademark Office, namely February 8, 2002, should be maintained;
- (6) the above-identified application with the substitute specification referenced in (3) above should be examined on the merits;
- (7) a refund of the petition fee is warranted; and
- (8) the substitute specification satisfies the requirements of 37 C.F.R. § 1.52.

Again, Applicants petition the Commissioner for Patents to:

- (1) determine that the items alleged in the NOTICE as omitted from the application, namely pages numbered 259-268 of the specification (description and claims), were received by the United States Patent and Trademark Office with the above-identified application;
- (2) determine that the filing date accorded to the above-identified application of February 8, 2002, should also be accorded for pages numbered 259 to 268 of the specification; and
- (3) refund the petition fee.

Again, in the event that the instant Petition is not granted, Applicants respectfully request that the Title page and pages numbered 1 to 258 of the enclosed substitute specification be accepted as a formal application, and that the application be examined on the merits.

The Commissioner for Patents is hereby authorized to charge any fees required for this communication, or credit any overpayment of fees, to deposit account 23-0455.

The undersigned would welcome a telephone call from the Commissioner to discuss any matters.

Respectfully submitted,

Claude F. Purchase, Jr.

Claude F. Purchase, Jr.
Reg. No. 47,871
Warner-Lambert Company
2800 Plymouth Road
Ann Arbor, MI 48105
Tel. (734) 622-1692
Fax (734) 622-1553

Enc. Photocopy of original of USPTO-supplied Part 2 Copy of Notice to File Corrected
Application Papers (2 pages)
Declaration A (3 pages)
Declaration B (3 pages)
Declaration C (2 pages)
EXHIBIT A (2 pages)
EXHIBIT B (2 pages)
EXHIBIT C (11 pages)
EXHIBIT D (1 page)
EXHIBIT E (1 page)